

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
WISCONSIN BELL, INC. D/B/A SBC WISCONSIN
AND
AMERICAN FIBER NETWORK, INC.**

This UNE Conforming Amendment is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Wisconsin Bell, Inc. d/b/a SBC Wisconsin¹ ("SBC Wisconsin") and American Fiber Network, Inc. ("CLEC").

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "*Triennial Review Order*" or "*TRO*"), which became effective as of October 2, 2003; and

WHEREAS, by its *TRO*, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, SBC Wisconsin is no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the *TRO* requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act, and therefore, SBC Wisconsin is no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law;

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended, as follows, to ensure that the terms and conditions of the Agreement related to specific network elements made available hereunder on an unbundled basis under Sections 252(c)(3) and (d)(2) are conformed so as to be consistent with applicable federal law:

1.1 Pursuant to the *TRO* and to the decision in *USTA II*, ***except as provided in Paragraph 2.1***, nothing in the Agreement requires SBC Wisconsin to provide to CLEC any of the following items, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

(i) entrance facilities; (ii) dedicated transport, at any level, including but not limited to DSO, OCn, DS1, DS3, or dark fiber transport; (iii) local circuit switching

¹ Wisconsin Bell, Inc. (previously referred to as "Wisconsin Bell"), is a wholly-owned subsidiary of Ameritech Corporation and now operates under the name "SBC Wisconsin" pursuant to an assumed name filing with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications Inc.

[for any other form of circuit switching]; (iv) OCn loops, DS1 or DS3 loops, or dark fiber loops; (v) the feeder portion of the loop; (vi) the “high frequency portion of the loop” (including as used in line sharing); (vii) any call-related database (other than the 911 and E911 databases), that is not provisioned in connection with CLEC’s use of SBC Wisconsin’s unbundled local circuit switching (as local circuit switching is no longer, or is no longer to be, provided under this Agreement on an unbundled basis, SBC Wisconsin is not obligated to provide, and CLEC shall not request such call-related databases, other than the 911 and E911 databases, under this Agreement); (viii) SS7 signaling that is not provisioned in connection with CLEC’s use of SBC Wisconsin’s unbundled local circuit switching (as local circuit switching is no longer, or is no longer to be, provided under this Agreement on an unbundled basis, SBC Wisconsin is not obligated to provide, and CLEC shall not request, SS7 signaling under this Agreement); (ix) packet switching, including routers and DSLAMs; (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 C.F.R. § 51.319(a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier (“DLC”) systems or equipment used to provide passive optical networking (“PON”) capabilities; (xi) fiber-to-the-home Loops (as defined in 47 C.F.R. § 51.319(a)(3)) (“FTTH Loops”), except to the extent that SBC Wisconsin has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC Wisconsin will provide nondiscriminatory access to a transmission path capable of voice grade service over the FTTH loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

1.2 For purposes of this Amendment, the following elements shall be referred to as the “USTA II Elements”:

- 1.2.1 local circuit switching for “mass market” customers (as used in the *TRO*) (per vacatur of 47 C.F.R. § 51.319(d)(2),(5));
- 1.2.2 DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); and
- 1.2.3 DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), and dark fiber loops and transport (per vacatur of 47 C.F.R. § 51.319(e) and 47 C.F.R. § 51.319(a)(6)).

2.1 **USTA II Elements.** SBC Wisconsin shall provide under this Agreement, on an unbundled basis, the USTA II Elements until the earlier of (a) the effective date of final unbundling rules adopted by the FCC in the proceeding opened by the *Notice of Proposed Rulemaking* appended to the *Interim Order*; or (b) the date that is six months after Federal Register publication of the Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004) (“*Interim Order*”), that date being March 13, 2005; or (c) if the *Interim Order* is withdrawn, vacated or stayed, or are otherwise determined to be invalid, the date it is withdrawn, vacated or stayed, or is otherwise determined to be invalid (“*Interim Order Exclusion*”). Pursuant to the *Interim Order*, the continuation of the rates, terms and conditions applicable to the USTA II Element may be superseded by (1) voluntarily negotiated agreements between SBC Wisconsin and CLEC, (2) an intervening FCC order affecting specific unbundling obligations (*e.g.*, an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a Wisconsin public utility commission order raising the rates for network elements.

2.1.1 To the extent the Agreement is still in effect following the occurrence of the earlier of (a), (b) or (c), above, the following shall occur:

2.1.1.1 If (a) - The Interim Order Exclusion shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to each of the USTA II Elements (subject to the Notice and Transition set forth in Section 3.1, below); provided, however, that any USTA II Element for which the FCC has adopted a rule(s) requiring that such USTA II Element must be made available under Section 251(c)(3) shall continue to be provided by SBC Wisconsin in accordance with rates, terms and conditions of this Agreement related to those USTA II Element(s) that were in effect prior to the Effective Date of this Amendment, to the extent they are consistent with the new FCC rule(s), all subject to any subsequent amendments permitted by the *Interim Order*. In any event, the parties shall incorporate rates, terms and conditions that fully reflect the new FCC rule(s) for any such USTA II Element into the Agreement by an amendment, approved by the Commission.

2.1.1.2 If (b) - The Interim Order Exclusion shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to the USTA II Elements (subject to the Notice and Transition set forth in Section 3.1, below).

2.1.1.3 If (c) - The Interim Order Exclusion shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to the USTA II Elements as of January 1, 2005 (subject to the Notice and Transition set forth in Section 3.1, below).

2.1.2 Nothing in this Paragraph 2.1 shall affect the application of Paragraph 1.1 to elements that are *not* USTA II Elements.

3.1 **Notice and Transition.** In addition, if the Interim Order Exclusion ends because Section 2.1(a) occurs, and the FCC determines that one or more additional network elements are no longer required to be unbundled under Section 251(c)(3), then SBC Wisconsin is not required to provide the element(s) on an unbundled basis, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality, to CLEC under this Agreement, and the following notice and transition procedure shall apply:

3.1.1 SBC Wisconsin will provide written notice to CLEC of the fact that the network element(s) and/or the combination or other arrangement in which the network element(s) had been previously provided on an unbundled basis is no longer required to be provided. During a transitional period of thirty (30) days from the date of such notice, SBC Wisconsin agrees to continue providing such network element(s) under the terms of this Agreement.

3.1.1.1 Upon receipt of such written notice, CLEC will cease new orders for such network element(s) that are identified in the SBC Wisconsin notice letter. SBC Wisconsin reserves the right to monitor, review, and/or reject CLEC orders transmitted to SBC Wisconsin and, to the extent that the CLEC has submitted orders and such orders are provisioned after this 30-day transitional period, such network elements are still subject to this Paragraph 3.1, including the CLEC options set forth in subparagraph 3.1.1.2 below, and SBC Wisconsin's right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

3.1.1.2 During such 30-day transitional period, the following options are available to CLEC with regard to the network element(s) identified in the SBC Wisconsin notice, including the combination or other arrangement in which the network element(s) were previously provided:

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or

(ii) SBC Wisconsin and CLEC may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in the Agreement, including any amendments to the Agreement, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under subparagraph 3.1.1.2(i), above, and if CLEC and SBC Wisconsin have failed to reach agreement, under subparagraph 3.1.1.2(ii), above, as to a substitute service arrangement or element, then SBC Wisconsin will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement.

4. Except as prohibited or otherwise affected by the *Interim Order*, nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
5. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in this Amendment. The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
6. Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
7. Upon written request of either Party, the Parties will amend any and all Agreement pricing schedules to accurately reflect the terms and conditions of this Amendment.
8. Notwithstanding any contrary provision in the Agreement, this Amendment, or any SBC Wisconsin tariff, nothing contained in the Agreement, this Amendment, or any SBC Wisconsin tariff shall limit SBC Wisconsin's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the Wisconsin Commission, the FCC, any court or any other governmental authority related to, concerning, or that may affect SBC Wisconsin's obligations under the Agreement, this Amendment, any SBC Wisconsin tariff, or Applicable Law.
9. Any performance measures and remedies identified in the Agreement apply solely to UNEs which SBC Wisconsin is obligated to offer under Section 251(c)(3) of the Act. If an element is no longer required to be provided as an unbundled network element under this Agreement by virtue of this Amendment, SBC Wisconsin will have no obligation to report on or pay remedies for any measures associated with such element, notwithstanding any language to the contrary in the Agreement.
10. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law

rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Inter-carrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC Wisconsin shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC Wisconsin has adopted the FCC ISP terminating compensation plan ("FCC Plan") in Wisconsin, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC Wisconsin's right to exercise its option at any time to adopt on a date specified by SBC Wisconsin the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

11. The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Wisconsin Utility Regulatory Commission and shall become effective ten (10) days following approval by such Commission.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2004, by SBC Wisconsin, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

American Fiber Network, Inc.

Wisconsin Bell, Inc. d/b/a SBC Wisconsin by
SBC Telecommunications, Inc., its authorized
agent

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: *For/* Senior Vice President –Industry Markets
& Diversified Businesses

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____